

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

JORGE LUIS PERALTA-HERNANDEZ,
Petitioner,

v.

**CIVIL ACTION NO. 3:04CV41
CRIMINAL ACTION NO. 3:03CR39
(BROADWATER)**

UNITED STATES OF AMERICA,
Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, dated July 1, 2005. The petitioner filed objections to the Report on July 15, 2005. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review. After reviewing the above, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

The Court further **ORDERS** that the government's motion to dismiss (**Docket # 7**) is **DENIED** and the petitioner's motion and supplemental motion (**Docket #s 1 & 9**) are **DENIED and DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation. It is further **ORDERED** that this action be and is hereby **STRICKEN** from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

DATED this **24th** day of October 2005.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE

